In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 338

MARIE GERMAINE ROSE ANNA BISAILLON,
Petitioner,

vs.

JOSEPH SURÉCK, District Director, Immigration and Naturalization Service, Honolulu,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

HOWARD K. HOBBICK,
318 Damon Building, Honolulu, Hawaii,
Counsel for Petitioner.

Hobbick & Anti Chang,
318 Damon Building, Honolulu, Hawaii,
Of Counsel.

Subject Index

	Page
Citation to opinions below	2
Jurisdiction	2
Questions presented	2
Statutes, regulations and constitutional provisions involved	3
Statement of the case	4
Reasons for granting the writ	9
I.	
A violation of 18 U.S.C. 1542 does not involve moral turpitude	9
II.	
The deportation hearing was conducted in violation of law and in such a manner as to constitute a denial of due process to the petitioner	14
A. The petitioner was denied the right to be represented by counsel at the hearing	14
B. Petitioner was denied full judicial review because a complete record of the deportation hearing was not made	15
C. The deportation order was unlawful because it was based on the specific acts which constituted petitioner's violations of 18 U.S.C. 1542	18
Conclusion	21

Table of Authorities Cited

Cases

Page

Ablett v. Brownell, 1957, C.A.D.C., 240 F. 2d 625 14

Bridges v. United States, 346 U.S. 209 (1953) 10, 13
Bridges v. Wixon, 326 U.S. 135 (1955) 13

Coykendall v. Skrmetta, 5th Cir., 1927, 22 F. 2d 120 13

Handlovits v. Adcock, 1948, E. D. Mich., 80 F. Supp. 425 14
Hao v. Barber, 1955, 9 Cir., 222 F. 2d 821, cert. den. 350 U.S. 878 15
Hyun v. Landon, 1955, 9 Cir., 219 F. 2d 404, aff'd 350 U.S. 990, reh. den. 351 U.S. 928 14

In the Matter of B, 6 I. & N. Dec. 98 13
In the Matter of H, 2 I. & N. 134 13
In the Matter of K, Interim Dec. No. 793, Bd. of Immigration App., April 20, 1956 10
In the Matter of R, 6 I. & N. Dec. 440 ..... 13, 14
Isbrandtsen Co. v. United States, D.C.N.Y. 1951, 96 F. Supp. 883, aff'd 342 U.S. 950 16

Khan v. Barber, 1958, 9 Cir., 253 F. 2d 547 10
Konigsberg v. State Bar, 353 U.S. 252, fn. 18 (1957) 9, 11
Kwock Jan Fat v. White, 253 U.S. 464 (1920) 15

Marcello v. Ahrens, 5 Cir., 212 F. 2d 830, aff'd 349 U.S. 302 14
Morgan v. United States, 298 U.S. 468 (1936) 17

Navarrette-Navarrette v. Landon, 1955, 9 Cir., 233 F. 2d 234, cert. den. 351 U.S. 911 14

Petrowicz v. Holland, 1956, D.C.E.D. Pa., 142 F. Supp. 369 14
Pino v. Nicholls, D.C. Mass., 1954, 119 F. Supp. 122, aff'd 215 F. 2d 237, rev'd on other grounds 349 U.S. 901 12
Ponzi v. Ward, 1934, D.C. Mass., 7 F.Supp. 736 10

Smith v. United States, 1946, 4 Cir., 157 F. 2d 176 16

Pages

United States v. Carrollo, W.D. Mo., 1939, 30 F. Supp. 3 . . 12, 19
United States ex rel. Bauer v. Shaughnessy, 1949, S.D.N.Y., 115 F. Supp. 780, cert. den. 332 U.S. 839 17
United States ex rel. Berlandi v. Reimer et al., S.D.N.Y., 1929, 30 F. Supp. 767, aff'd 113 F. 2d 429 10
United States ex rel. de George v. Jordan, 341 U.S. 223 (1951) 10, 11
United States ex rel. Guarino v. Uhl, 2d Cir., 1939, 107 F. 2d 69 19
United States ex rel. Iorio v. Day, 2d Cir., 1929, 34 F. 2d 20 12
United States ex rel. Manzella v. Zimmerman, E. D. Pa., 1947, 71 F. Supp. 534 . . . . . 12, 19
United States ex rel. Meyer v. Day, 2d Cir., 1931, 54 F. 2d 336 12
United States ex rel. Mylius v. Uhl, S.D.N.Y., 1913, 203 F. 852, aff'd 2d Cir., 1914, 210 F. 860 . . . . . 12, 19
United States ex rel. Tepêr v. Miller, S.D.N.Y., 87 F. Supp. 285 12

Vidal Y. Planas v. Landon, S. D. Calif., 1952, 104 F. Supp. 384 12

Vlantopoulos v. Robinson, 1957, 247 F. 2d 655 14

Constitutions

Constitution of the United States, Amendment V 4

Statutes

Act of June 25, 1948, c. 645, 62 Stat. 771, 18 U.S.C. 1542 . . . . . 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 18, 19

Act of June 27, 1952, c. 477, Title II, ch. 5:
Section 241(a)(4) (66 Stat. 204, 8 U.S.C. 1251(a)(4)) 3, 6, 8, 10
Section 242 (66 Stat. 208, 8 U.S.C. 1252(b)) 4, 15, 16
Section 242(b)(3) (8 U.S.C. 1252(b)(3) 14

Pages

Administrative Procedure Act, Section 10, Act of June 11, 1946, c. 324, Sec. 10, 60 Stat. 243, 5 U.S.C. 1009 ... 2, 3, 8, 15, 16

18 U.S.C., Section 911 ... 4, 6

28 U.S.C. 1254(1) ... 2

Texts

42 Am. Jur. 390 ... 14

8 C.F.R., Section 242.15 ... 4, 5

43 Harvard Law Review 117, 121 ... 10

95 L. ed. 899, 902-903, Annotation ... 20

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No.

MARIE GERMAINE ROSE ANNA BISAILLON,
Petitioner,

vs.

JOSEPH SURECK, District Director, Immigration and Naturalization Service, Honolulu,[1]
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled matter on July 1, 1958.

[1] Joseph Sureck as successor District Director, Immigration and Naturalization Service, Honolulu, was substituted for William A. Hagan by order of the Court of Appeals for the Ninth Circuit, dated August 23, 1958, a copy of which is appended to this Petition in the Appendix at pages 8-9.

CITATION TO OPINIONS BELOW.

The findings and conclusions and the judgment of the United States District Court for the District of Hawaii are not reported, but they appear at pages 12-17 of the record. The opinion of the United States Court of Appeals for the Ninth Circuit is not yet reported; a copy thereof is appended to this petition in the appendix at pages 1-6. No petition for rehearing was filed.

JURISDICTION.

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 1, 1958, and a copy thereof is appended to this petition in the appendix at page 7. No pefition for rehearing was filed. The United States Court of Appeals for the Ninth Circuit entered an order on July 29, 1958, staying the issuance of the mandate providing this petition is filed with this Court on or before August 30, 1958, The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED.

The United States Court of Appeals for the Ninth Circuit affirmed the judgment for the respondent of the United States District Court for the District of Hawaii in an action filed by the petitioner under the provisions of 5 U.S.C. 1009 for review of an order

for her deportation and seeking a declaratory judgment that she is not deportable.

The questions presented are:

1. Does a violation of 18 U.S.C. 1542 involve moral turpitude?

2. Was the order for petitioner's deportation unconstitutional, in that there was a failure of due process, and unlawful because,

(a) She was denied the right to counsel at her deportation hearing?

(b) A complete record of the deportation hearing was not made?

(c) The order was based on the specific acts which constituted petitioner's violations of 18 U.S.C. 1542?

STATUTES, REGULATIONS AND CONSTITUTIONAL PROVISIONS INVOLVED.

The pertinent portions of the following statutes, regulations and constitutional provisions are included in the appendix to this petition at pages 10-12:

Section 10 of the Administrative Procedure Act, Act of June 11, 1946, c. 324, Sec. 10, 60 Stat. 243, 5 U.S.C. 1009.

Act of June 27, 1952, c. 477, Title II, ch. 5, Sec. 241 (a) (4), 66 Stat. 204, 8 U.S.C. 1251 (a) (4).

Act of June 25, 1948, c. 645, 62 Stat. 771, 18 U.S.C. 1542.

Section 242.15, Title 8, C.F.R.

Act of June 27, 1952, c. 477, Title II, ch. 5, Sec. 242, 66 Stat. 208, 8 U.S.C. 1252 (b).

Amendment V to the Constitution of the United States.

STATEMENT OF THE CASE.

Petitioner is a native and citizen of Canada lawfully admitted to the United States for permanent residence at St. Albans, Vermont, on December 8, 1947 (R. 13, Ex. 8, pp. 10-11[2]). She departed from the United States sometime after June 23, 1950, and re-entered the United States from Brazil at San Juan, Porto Rico, on August 30, 1950 (Ex. 8, pp. 10-11). She is the owner and manager of a four-unit apartment house in Waikiki, Honolulu, Hawaii (Ex. 8, p. 9).

On October 20, 1955, petitioner was convicted of violations of Sections 911 and 1542, Title 18, U.S.C., in the United States District Court for the District of Hawaii in Criminal Case No. 10,982; on December 29, 1955, she was convicted of violations of Sections 911 and 1542, Title 18, U.S.C., in the same Court in Criminal Case No. 10,993 (R. 13). In No. 10,982, Count I of the Information filed against petitioner, in which she was charged with a violation of Section 1542, alleges in substance that on or about

[2]Exhibit 8 is a transcript of the deportation hearing and a copy thereof is appended to this Petition in the Appendix at pages 13-36.

August 16, 1954, she made a false statement in the application of one Florence Paquet for a United States Passport in that she stated she was not related to Florence Paquet and that she knew Florence Paquet to be a citizen of the United States (Ex. A, Sub-Ex. 5[3]). In No. 10,993, in Count I of the Indictment returned against petitioner, she is charged with another violation of Section 1542, to-wit: That on or about January 16, 1953, she made a false statement in an application for a passport that she was born in Laurin, Montana, on October 10, 1919 (Ex. A, Sub-Ex. 6). In each case it is further alleged that the false statements were made to induce and secure the issuance of the passport.

Following conviction in No. 10,982, petitioner was sentenced to 18 months in prison (Ex. A, Sub-Ex. 5), and after conviction in No. 10,993, she was sentenced to pay a fine of $1,000.00 on Count I of the Indictment (Ex. A, Sub-Ex. 6).

While serving the prison term of 18 months imposed as a result of her first conviction she was served at the prison with a warrant of arrest dated January 4, 1956, preliminary to deportation proceedings being commenced against her (R. 19, Ex. 1 a). In the warrant she is charged with being in the United States in violation of its immigration laws in that she had been convicted of a crime involving moral turpitude committed within five (5) years after

---

[3]"Sub-Ex" whenever used in this Petition designates the exhibit attached to Exhibit A, the original transcript of the deportation hearing.

entry and sentenced to confinement for a year or more (18 U.S.C. 1542), and in that she had been convicted after entry of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct (18 U.S.C. 1542 and 911), thereby making her deportable under 8 U.S.C. 1251 (a)(4).

After receiving this warrant, petitioner promptly retained the services of Elmer E. Poston, a lawyer and a retired District Director of the Immigration and Naturalization Service for the District of Hawaii (R. 27, Exhibit 2). Because of his previous employment the Service questioned Mr. Poston's right to represent petitioner in the deportation proceeding and this matter was determined adversely to petitioner by the Board of Immigration Appeals (Ex. 3). Immediately after receipt of this advice, Mr. Poston, by letter dated March 17, 1956, and received by Mr. Hogan, the District Director of the Immigration and Naturalization Service, on March 19th at 2:21 p.m. advised that he had applied to the Board for reconsideration of its decision and requested a continuance of the hearing (R. 77, 79). On March 20, 1956, Mr. Hogan addressed a letter to petitioner at Oahu Prison, where she was incarcerated, advising that her deportation hearing would be held April 9, 1957, and that Mr. Poston was disqualified from representing her (Ex. 3). Petitioner was also apprised by Mr. Poston that he was seeking reconsideration of the ruling, and right up to the time it commenced she expected him to represent her at the hearing (Ex. 4, p. 4, R. 35). On March 21, 1956, Mr. Poston addressed

a letter to Mr. Finucane, the chairman of the Board of Immigration Appeals, advising that the deportation hearing had been set for April 9, 1956, and requesting expeditious action on his motion for reconsideration; a copy of this letter was sent to the Honolulu office of the Service (R. 79-80). No action was taken on the motion for reconsideration of Mr. Poston's disqualification until April 25, 1956 (R. 80). The deportation hearing was held April 9 and 13, 1956, before Mr. Arnold, special inquiry officer, at the prison, and Mr. Poston was not there nor was petitioner represented by any counsel (Ex. 8).

Exhibit 8, consisting of 20 pages, (Appendix pp. 13-36) is a transcript of the proceedings had on April 9 and 13, 1956. It is incomplete as there are 12 occasions when there were "discussion(s) off the Record" (Ex. 8, pp. 6, 7, 9, 12, 13, 14, 15, 16, 17, 19). Evidence of the criminal charges presented and of her convictions thereon was received (Ex. 8, pp. 11-13; Ex. A, Sub Ex. 5 and 6). The major portion of Exhibit 8 is devoted to the matter of her not having counsel and clearly reflects how she was pressured into consenting to proceed with the hearing without counsel. A written "stipulation" offered at the hearing by petitioner was rejected without examination because it had been prepared by Mr. Poston (Ex. 8, pp. 3, 4, 5).

Sometime after the deportation hearing commenced on April 9, 1956, the examining officer lodged two new charges against petitioner, namely, that she was deportable because of her conviction of a violation of

Section 1542, Title 8, U.S.C., and sentence of 18 months on that conviction and because of her two convictions of violations of Section 1542, Title 8, U.S.C. (Ex. 8, p. 14). After this new charge was lodged the hearing was continued to April 13, 1956 (Ex. 8, p. 15). On April 13, 1956, the only additional evidence taken was to have petitioner repeat her name and to examine her as to whether she wanted counsel and what attempt she had made to obtain counsel between April 9 and 13, 1956 (Ex. 8, pp. 16-19).

On May 4, 1956, Mr. Hogan addressed a letter to petitioner at the prison enclosing the decision of the special inquiry officer finding her deportable under the provisions of 8 U.S.C. 1251(a)(4) on the charges lodged at the hearing (Ex. 4a and Ex. 4b). In this connection the special inquiry officer ruled that petitioner's violations of Section 1542, Title 18, U.S.C., involved moral turpitude, but that her violation of Section 911, Title 18, U.S.C., did not. From this decision petitioner, through her present counsel, took an appeal to the Board of Immigration Appeals and her appeal was dismissed (R. 42). By letter dated November 21, 1956, and addressed to petitioner at the prison, Mr. Hogan advised her that her appeal had been denied and that she would be taken into custody December 3, 1956, and deported shortly thereafter (Ex. 5).

On November 27, 1956, petitioner filed her complaint in the United States District Court for the District of Hawaii under 5 U.S.C. 1009, praying for a judgment declaring her not deportable (R. 3-6).

An answer was filed December 4, 1956 (R. 10-12). Petitioner completed her term and was released from prison in January, 1957 (R. 81). After hearing, the District Court entered findings of fact and conclusions of law in which it held in part that the grounds of the decision of the special inquiry officer that petitioner was deportable were correct and that she had been afforded a fair hearing (R. 12-16). Judgment was entered dismissing the complaint on June 11, 1957 (R. 16-17). Petitioner appealed from this judgment to the United States Court of Appeals for the Ninth Circuit and that Court affirmed the judgment on July 1, 1958. This petition is filed seeking a review of the judgment of the Court of Appeals.

REASONS FOR GRANTING THE WRIT.

I.

A VIOLATION OF 18 U.S.C. 1542 DOES NOT INVOLVE MORAL TURPITUDE.

In determining that a violation of 18 U.S.C. 1542 involves moral turpitude the Court below has decided an important question of federal law which had not heretofore been the subject of any printed decision. As the Court below observed "there are a myriad of decisions sponsoring various concepts of 'moral turpitude', offering no well-settled criteria, and even this Court has recently indicated that it considers the term unusually ambiguous. *Konigsberg v. State Bar*, 353 U.S. 252, 262-263, fn. 18 (1957). Since the statute,

8 U.S.C. 1251(a)(4), making an alien subject to deportation who is convicted of a crime involving moral turpitude, does not contain a definition of the term "moral turpitude"; it is important that either a final judicial definition be given covering its application with reference to all offenses or, at least, that this Court determine whether a violation of 18 U.S.C. 1542 involves "moral turpitude". It is further submitted that the decision of the Court below is in conflict with the decision of this Court in *Bridges v. United States*, 346 U.S. 209 (1953) in that numerous decisions of the courts and of the Board of Immigration Appeals have determined whether "moral turpitude" is involved in a crime of non-violence by whether fraud is or is not an essential element of the offense. *United States ex rel de George v. Badt*, 341 U.S. 223 (1951); *United States ex rel Boeland v. Reimer et al.*, S.D.N.Y. 1939, 30 F. Supp. 767, aff'd. 113 F. 2d 429; *Khan v. Barber*, 1958, 9 Cir. 253 F. 2d 547; *Ponzi v. Ward*, 1934, D. C. Mass., 7 F. Supp. 736; *In the Matter of K*, Interim Dec. No. 793, Bd. of Immigration Appl., April 20, 1956.

The need for a precise definition of the term "moral turpitude" is forcefully expressed in the following quotation from 43 Harvard Law Review 117, 121:

> "but it is in the Immigration Act that the phraseology [moral turpitude] seems most unfortunate. Though proceedings under the Act are not criminal, they are sufficiently severe in their application to be in their nature penal. Men who are menaced with the loss of civil rights should know with certainty the possible grounds of for-

feiture. And the loose terminology of moral turpitude hampers uniformity; it is anomalous that for the same offense a person should be deported or excluded in one circuit and not in another. But the weightiest objection is that the statute operates upon thousands to whom judicial review is denied by economic barriers. For them the final decision is to be made by lay administrators. It is hardly to be expected that words which baffle judges will be more easily interpreted by laymen; if power must be delegated, it should be clearly circumscribed."

Attention is called to Justice Jackson's dissent in the *Jordan* case, *supra*, at page 244, which was cited by this Court with approval in the *Konigsberg* case, *supra*, in which Justice Jackson stated:

"It would seem to be difficult to find a more striking instance than we have here of such a [vague] phrase since it requires even judges to guess and permits them to differ."

Section 1542 provides as follows:

"Whoever willfully and wrongly makes any false statement in an application for passport, with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passport or the rules prescribed pursuant to such laws; or

Whoever willfully and wrongly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

> Shall be fined not more than $2,000.00 or imprisoned not more than five years, or both."

The District Court and the Circuit Court approved the findings of the special inquiry officer that appellant is deportable because she had been convicted of a crime (Section 1542, Title 18, U.S.C.) involving moral turpitude committed within five years after entry, and confined therefor more than one year, and because after entry she had been convicted of two crimes (both of them Section 1542, Title 18, U.S.C. involving moral turpitude and not arising out of a single scheme of criminal misconduct.

The question of whether a crime involves moral turpitude is to be determined in the light of how such crime is regarded by the community or the average man, not by how an ideal citizen would feel about such crime. *United States ex rel. Iorio v. Day*, 2d Cir. 1929, 34 F. 2d 920.

To involve moral turpitude, the act or acts which constitute the crime must evidence baseness, vileness or depravity of moral character. *United States ex rel. Mylius v. Uhl*, S.D.N.Y., 1913, 203 F. 152, 154 aff'd 2d Cir., 1914, 210 F. 860; *United States ex rel. Meyer v. Day*, 2d Cir., 1931, 54 F. 2d 336; *United States v. Carrollo*, W.D. Mo., 1939, 30 F. Supp. 3; 7; *United States ex rel. Manzella v. Zimmerman*, E. D. Pa. 1947, 71 F. Supp. 534; *United States ex rel. Tejeda v. Miller*, S.D.N.Y., 87 F. Supp. 285; *Pino v. Nicholls*, D.C. Mass., 1954, 119 F. Supp. 122, aff'd 215 F. 2d 237, rev'd on other grounds, 349 U.S. 901; *Vidal v.*

Planas v. Landon, S. D. Calif., 1952, 104 F. Supp. 384; *In the Matter of B*, 6 I. & N. Dec. 98, 106.

As was stated in *In the Matter of B* at page 107:

> "One of the criteria adopted to ascertain whether a particular crime involves moral turpitude is that it be accompanied by a vicious motive or corrupt mind."

A crime does not involve moral turpitude if before it was made punishable as a crime it was not generally regarded as morally wrong, or as offensive to the moral sense of the community. *Coykendall v. Skrmetta*, 5th Cir., 1927, 22 F. 2d 120; *In the Matter of R*, 6 I. & N. Dec. 440, 452.

It does not support the decision of the Court below to say that petitioner was convicted of a crime akin to perjury since she was neither charged with nor convicted of perjury. It is submitted, in the light of the many decisions holding that to involve moral turpitude a crime must evidence baseness, vileness or depravity of moral character, or that fraud must be an essential element of the crime, and the holding of this Court in the *Bridges* case that a false statement to procure naturalization does not involve fraud, that a violation of 18 U.S.C. 1542 is not tainted with moral turpitude.

II.

THE DEPORTATION HEARING WAS CONDUCTED IN VIOLATION OF LAW AND IN SUCH A MANNER AS TO CONSTITUTE A DENIAL OF DUE PROCESS TO THE PETITIONER.

A. The Petitioner was denied the right to be represented by counsel at the hearing.

There can be no question that both as a matter of statutory law (8 U.S.C. 1252(b)(3)) and as a matter of due process an alien has a right to be represented by counsel at a deportation hearing. *Marcello v. Ahrens*, 5 Cir., 212 F. 2d 830, aff'd 349 U.S. 302; *Yiannopoulos v. Robinson*, 1957, 247 F. 2d 655; *Navarrette-Navarrette v. Landon*, 1955, 9 Cir., 233 F. 2d 234, cert. den. 351 U.S. 911; *Hyun v. Landon*, 1955, 9 Cir. 219 F. 2d 404, aff'd 350 U.S. 990, reh. den. 351 U.S. 928.

An examination of Exhibit 8, the transcript of the deportation hearing which is printed in the appendix to this petition, pp. 13-16, reflects that petitioner was denied her right to representation by counsel and that any expression of waiver of that right was obtained through coercion. As was said in this connection in *Handlovits v. Adcock*, 1948, E. D. Mich., 80 F. Supp. 425, 428,

> "It is not compliance with the requirements of a fair hearing to say that she would be subject to deportation in any event."

Compare

Petrowicz v. Holland, 1956, D.C.E.D. Pa., 142 F. Supp. 369.

This was a case of first impression and petitioner was entitled to the assistance of counsel not only to present arguments on the merits to the Special Inquiry Officer, but also to control the receipt of evidence, examine witnesses, and to guard against matters being covered in "discussions off the record" which should have later been reviewed by the Court.

In *Bridges v. Wixon*, 326 U.S. 135, 153 (1955), this Court stated:

> "It was assumed in *Bilokumsky v. Tod*, 263 U.S. 149, 155, that 'one under investigation with a view to deportation is legally entitled to insist upon the observance of rules promulgated by the Secretary pursuant to law.' We adhere to that principle."

and at page 154:

> "That deportation is a penalty—at times a most serious one—cannot be doubted. Meticulous care must be exercised lest the procedures by which he is deprived of that liberty not meet the essential standards of fairness."

B. Petitioner was denied full judicial review because a complete record of the deportation hearing was not made.

Petitioner was entitled to a full judicial review of the order for her deportation and of the hearing upon which that order was based. 5 U.S.C. 1009; *Hao v. Barber*, 1955, 9 Cir., 222 F. 2d 821, 822, cert. den. 350 U.S. 878.

As stated in Section 1252(b), Title 8, U.S.C., *supra*, n.6: "Determination of deportability in any case may be made only upon a record made in a proceeding be-

fore a special inquiry officer." Section 242.15, Title 8, C.F.R., provides that "The hearing shall be recorded verbatim except for statements made off the record with the permission of the special inquiry officer." However, a record of 20 pages containing 12 discussion(s) "off the record", many of which pertained to the important question of whether petitioner was to be represented by counsel, does not constitute the type of record required under §1252(b), Title 8, U.S.C., nor does it provide the type of record capable of review in a proceeding under the Administrative Procedure Act, Section 1009, Title 5, U.S.C. *Isbrandtsen Co. v. United States*, D.C.N.Y. 1951, 96 F. Supp. 883, aff'd 342 U.S. 950.

The Court below took the position that since a witness had testified as to the nature of these numerous discussions off the record that they were innocuous and no prejudice to petitioner resulted. Aside from the fact that this witness was the examining officer, he was unable to remember what two of these discussions off the record were about (R. 90, 95). These omissions from the record of the hearing must be viewed in the light of the petitioner's testimony as to why she consented to proceeding without counsel, to-wit: "I had no choice. I had to say 'Yes'." (R. 37).

In *Smith v. United States*, 1946, 4 Cir., 157 F. 2d 176, which involved the question of whether a registrant had received proper review of his classification, the Court held:

> "The regulations required that the record of a registrant on appeal to the board of appeal shall

contain a written summary of all the facts considered by the local board in making its classification; . . . and since the conclusions of the board of appeal are necessarily based upon the written record, omission of material facts deprives the registrant of his right to an adequate consideration of his case on appeal and amounts to a denial of due process by the local board which invalidates its classification and order of induction into the armed services."

See also:

Morgan v. United States, 298 U.S. 468, 477 (1936).

It is to be noted that none of the testimony was placed "off the record" at the request of petitioner but was usually done "at the suggestion of the special inquiry officer" (R. 101-102). In *United States ex rel. Bauer v. Shaughnessy*, 1949, S.D.N.Y., 115 F. Supp. 780, 784, cert. den. 332 U.S. 839, the Court approved the use of off the record discussions on the ground that no objections to this procedure had been voiced by the alien, but in that case the alien was a patent attorney.

". . . Where a board or commission is required to base its actions on findings to be made after a hearing, a definite record must be made of all evidence produced before the Commission and all matters upon which it bases its order. The function of the court to prevent abuse of power by administrative officers can be fulfilled only when a full record is preserved of the essentials on which the officers proceed to judgment. A failure to make and preserve such a record for the pur-

poses of administrative as well as judicial review may constitute a denial of a fair hearing."
42 Am. Jur. 390.

In *Kwock Jan Fat v. White*, 253 U.S. (1920), the Court reviewed the adequacy of a record of an exclusion hearing. The Court held at page 464:

"It is the province of the courts, in proceedings for review, within the limits amply defined in the cases cited to prevent abuse of this extraordinary power, and this is possible only when a *full* record is preserved of the essentials on which the executive officers proceed to judgment. For failure to preserve such a record for the information, not less of the Commissioner of Immigration and of the Secretary of Labor than of the courts, the judgment in this case must be reversed." (Emphasis supplied.)

C. The deportation order was unlawful because it was based on the specific acts which constituted Petitioner's violations of 18 U.S.C. 1542.

The Special Inquiry Officer received in evidence copies of the charges preferred against petitioner and based his finding that the offenses involved moral turpitude on the allegations contained therein. Likewise the District Court and the Court below looked at the charges to determine whether petitioner's violations involved moral turpitude (R. 15, Ex. A, Sub Ex. 5 and 6). It may have been permissible to examine the charges to ascertain what statute petitioner had violated, but not for the purpose of discovering what acts on her part constituted the violation.

This follows from the fact that the test of whether the crimes of which petitioner was convicted involve moral turpitude does not lie in the acts which she did, but rather, in whether any act or combination of acts, which would constitute an offense under the statute defining the crime, inherently or necessarily, involve moral turpitude.

In the Matter of R, 6 I. & N. 444, at page 448, the Board of Immigration Appeals held that:

> "If, on the other hand, we find that the law punishes acts which do not involve moral turpitude, then we *must* rule that *no* conviction under that law involves moral turpitude, although in the particular instance conduct was immoral. (*United States ex rel Robinson v. Day, supra,*)"

To the same effect see: *Ablett v. Brownell*, 1957, C.A.D.C., 240 F. 2d 625; *United States ex rel. Mylius v. Uhl, supra*; *United States ex rel. Manzella v. Zimmerman, supra* at p. 538; *United States ex rel. Guarino v. Uhl*, 2d Cir., 1939, 107 F. 2d 399; *In the Matter of E*, 2 I. & N. 134, 145; *United States v. Carrollo, supra.*

It must be apparent that an applicant for a United States passport could commit a violation of Section 542 by giving false information as to the date of his birth, the place where he was born, his occupation, his address, the name of his wife and or many other things called for in the application. If done knowingly, he should be punished, but as was stated in the *Carrollo* case, *supra*, "To say that he is base, or vile,

or depraved is to misuse words." Under the principles set out above, the Court cannot look at the evidence to see whether such an applicant had a criminal intent at the time he made the false statement; he may have done it because he was embarrassed about his age or the town in which he was born or lived, or because his wife was insane, or simply because he considered himself a "rugged individualist" and that the information requested was none of the Government's business. Also, even if he were to tell the truth he might still be entitled to a passport.

In determining whether a conviction is based upon a crime involving moral turpitude the Courts

> "... must look only to the inherent nature of the crime as defined by law as to the facts charged in the indictment upon which the alien was convicted. The question does not depend upon unnecessary adjectives, a zealous prosecutor may have added in the indictment to the essentials required by law nor upon the eloquent description of the offense by the prosecutor to court or jury ..."
>
> "When by its definition the crime does not necessarily involve moral turpitude, the alien cannot be deported because in the particular instance his conduct was immoral."
>
> Annotation, 95 L. ed. 899, 902-903.

CONCLUSION.

For the foregoing reasons a writ of certiorari should issue and the judgment below be reversed.

Dated, Honolulu, T. H.,
August 16, 1958.

Respectfully submitted,
HOWARD K. HODDICK,
Counsel for Petitioner.

HODDICK AND CHANG,
Of Counsel.

(Appendix Follows.)

Appendix

United States Court of Appeals
for the Ninth Circuit

Marie Germaine Rose Anna Bisaillon, Appellant, vs. William A. Hogan, District Director, Immigration and Naturalization Service, Honolulu, Appellee.	No. 15,749 July 1, 1958

Appeal from the United States District Court
for the District of Hawaii

Before: Healy, Pope, and Chambers, Circuit Judges

Healy, Circuit Judge

Appellant, an alien, was ordered deported after proceedings before a special inquiry officer of the Immigration Service and an appeal of that officer's decision to the Board of Immigration Appeals. She then filed in the court below an action for declaratory judgment seeking review of the agency order. The court found and concluded that the determination of the Service was not erroneous, and that appellant had not been denied a fair hearing. Accordingly the proceeding for declaratory relief was dismissed, and this appeal followed.

Appellant was born in Montreal, Canada, and is a Canadian citizen. She first entered the United States

for permanent residence in 1947, departed in 1950, and made her latest entry into this country the same year. She resides in Hawaii.

In October of 1955 she was tried and convicted of violation of 18 USC §1542 and was sentenced to serve a term of 18 months. In December of the same year she was convicted of another and distinct offense against the same statute, and was fined only. This statute in material part reads as follows:

> "Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce and secure the issuance of a passport under the authority of the United States either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws;
>
> . . . .
>
> "Shall be fined not more than $2,000 or imprisoned not more than five years, or both."

Specifically, the first of appellant's convictions under the statute was on the charge of making of a false statement in a passport application of one Florence Paquet to the effect that she was not related to Florence Paquet and that she knew her to be a citizen of the United States. Her second conviction was on the charge of making of a false statement in an application for a passport for herself, to the effect that she was born in Laurin, Montana.

While appellant was still in prison serving her sentence, deportation proceedings were commenced

against her. She was charged with being deportable under 8 USCA §1251(a)(4) as one who

> "(4) is convicted of a crime *involving moral turpitude* committed within five years after entry and . . . sentenced to confinement . . . for a year or more, or who at any time after entry is convicted of two crimes *involving moral turpitude*, not arising out of a single scheme . . . regardless of whether confined. . . ." (Emphasis supplied.)

On appeal here appellant claims, among other things, that she was deprived of a fair hearing before the special inquiry officer in that she was not represented by counsel. The claim appears lacking in merit. At the outset appellant retained one Poston as her attorney. Poston had formerly been a district director of the Service for the District of Hawaii. Because of this the Service questioned his right to represent appellant, and the point was decided against him by the Board of Immigration Appeals. This ruling was made and communicated about March 17th of 1956. Poston applied for a rehearing of the ruling.

Appellant on March 20 following was informed by the Service that there would be a hearing of her case before the special inquiry officer on April 9th. When that date arrived she was not represented by counsel, nor had she heard from Mr. Poston whether or not he had gained a rehearing of his disqualification ruling. When asked whether she would proceed without counsel or whether she desired a continuance to the following day to obtain one she replied that she was willing to proceed.

During the hearing on the 9th the government entered new charges, which appear merely to be a rewording of the original, and appellant was then given a continuance until April 13 to obtain counsel. She did not do so, and on the 13th she reluctantly consented to proceed. On the subsequent appeal to the Board of Immigration Appeals she was fully represented by counsel of her own choice.

Appellant was by no means an indigent person, nor was she a defendant in a criminal case. She had counsel of her own choosing, not only before the Board of Immigration Appeals, but before the district court and here. She could as readily have obtained counsel to represent her before the special inquiry officer.

A second ground of claimed unfairness is that the transcript of the proceeding before the special inquiry officer indicates in a number of places that there were discussions "off the record", hence that the transcript does not truly reflect what transpired. Right to this off-the-record procedure is conferred on the hearing officer by statute (8 CFR 242.15). Moreover in the district court a witness who had been present testified as to the nature of the various off-the-record discussions that had taken place. They appear to have been innocuous so far as appellant was concerned.

The remaining question in the case, and the only one presenting genuine difficulty, is whether violation of 18 USC §1542 involves "moral turpitude" within the sense of 8 USC §1251(a)(4), heretofore quoted. Appellant argues that it does not. The government's position is that moral turpitude is involved in that

the statute requires for conviction proof of a false statement, knowingly and willfully made, with *intent* to obtain the issuance of a passport contrary to law. This conduct is said to be clearly a fraud on the United States though not measurable in dollars and cents. The offense, it is said, is akin to perjury, which latter offense is conceded by counsel for the appellant to be an offense involving moral turpitude.

As this court observed in Tseung Chu v. Cornell, 247 F. 2d 929, there are myriad of decisions sponsoring various concepts of "moral turpitude", offering no well-settled criteria. In that case the court cited and discussed numerous of the decisions bearing on the subject, and we shall not undertake again to plow that field at any length. Appellant's counsel argues that in determining whether moral turpitude is involved in a particular case one may look only at the statute, that is to say, one may not look at the indictment or judgment to see what the particular facts of the offense are. As we read Tseung Chu v. Cornell, supra, this view was there rejected.

Looking at the facts of the offenses of which appellant was convicted, her counsel argues that a nonviolent crime, to involve moral turpitude, must contain the element of fraud. For this view counsel relies heavily on Bridges v. United States, 346 U.S. 209. There Bridges was charged with having made a statement at his naturalization hearing to the effect that he was not and never had been a Communist. Contending that the statement was false, the government prosecuted him under §346(a)(1) of the then natural-

ization act, which declared it an offense "knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to . . . naturalization or citizenship".

In the *Bridges* case the normal statute of limitations pertaining to the offense charged was three years, and this time limit had passed. The government argued that a special wartime suspension of limitations statute was applicable. This statute extended the time limitation on offenses involving fraud in wartime against the government to three years after the end of the war. The Court held that the special suspension statute did not apply for two reasons: (1) that the statute covered only offenses where pecuniary fraud was involved, and, (2) the statute covered only offenses where fraud was a necessary element of the crime. The Court remarked (p. 222 of the Report) that "In that offense, as in the comparable offense of perjury, fraud is not an essential ingredient. The offense is complete without proof of fraud, although fraud often accompanies it."

It is significant (1) that in this observation the Court likened the offense to perjury, which concededly involves moral turpitude; and (2) that the statute we are concerned with here differs from the statute in *Bridges* in that the one before us requires the presence of the additional element of intent, namely, intent to induce the issuance of the passports under authority of the United States.

Affirmed.

(Endorsed:) Opinion. Filed July 1, 1958.
Paul P. O'Brien, Clerk.

United States Court of Appeals for the Ninth Circuit

Marie Germaine Rose Anna Bisaillon, Appellant, vs. William A. Hogan, District Director, Immigration and Naturalization Service, Honolulu, Appellee.	No. 15,749

JUDGMENT

Appeal from the United States District Court for the District of Hawaii.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Hawaii, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment
Filed and entered: July 1, 1958
Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

Marie Germaine Rose Anna Bisaillon, Appellant, vs. William A. Hogan, District Director, Immigration and Naturalization Service, Honolulu, Appellee.	No. 15,749

STIPULATION FOR SUBSTITUTION of Joseph Sureck for William A. Hogan as Appellee

Whereas, William A. Hogan on June 28, 1958, was assigned to another post with the Immigration and Naturalization Service, and on July 12, 1958, Joseph Sureck was appointed in his stead as the District Director of the Immigration and Naturalization Service at Honolulu, Territory of Hawaii; and

Whereas, the said Joseph Sureck in his capacity as said District Director intends to enforce the order for the deportation of the Appellant which is the subject of the appeal herein;

Now, Therefore, it is hereby stipulated by and between the parties and suggested by the parties that Joseph Sureck, District Director, Immigration and

Naturalization Service, Honolulu, be substituted as the Appellee herein for the said William A. Hogan.

Dated at Honolulu, T. H., this 15th day of August, 1958.

Howard K. Hoddick
Attorney for Appellant
Louis B. Blissard
United States Attorney for the
District of Hawaii
By Charles B. Dwight, III
Assistant United States Attorney
Attorney for Appellee.

Approved this 15th day of August, 1958.
Louis B. Blissard, United States Attorney
for the District of Hawaii,
By Charles B. Dwight, III
Assistant United States Attorney
Attorney for Joseph Sureck, as District
Director, Immigration and Naturalization
Service, Honolulu.

So Ordered this 23rd day of August, 1958.

Wm. Healy
Walter L. Pope
Judges of the Above Entitled Court.

STATUTES, REGULATIONS AND CONSTITUTIONAL PROVISIONS

Section 10 of the Administrative Procedure Act, Act of June 11, 1946, c. 324, Sec. 10, 60 Stat. 243, 5 U.S.C. 1009:

"Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion.

Rights of review

(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof."

* * * *

Act of June 27, 1952, c. 477, Title II, Ch. 5, Sec. 241 (a)(4), 66 Stat. 204, 8 U.S.C. 1251(a)(4):

"1251. Deportable Aliens—General Classes.

(a) Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who . . .

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial."

Act of June 25, 1948, c. 645, 62 Stat. 771, 18 U.S.C. 1542:

"1542. False statement in application and use of passport.

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement . . .

Shall be fined not more than $2,000 or imprisoned not more than five years, or both."

Section 242.15, Title 8, C.F.R.:

"242.15. Contents of record.

The hearing before the special inquiry officer, including the respondent's pleading, the testimony, the exhibits, the special inquiry officer's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in case. The hearing shall be recorded verbatim except for statements made off record with the permission of the special inquiry officer."

Act of June 27, 1952, c. 477, Title II, ch. 5, Sec. 242, 66 Stat. 208, 8 U.S.C. 1252(b):

"(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses and, as authorized by the Attorney General, shall

make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present. * * * Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. * * *"

Amendment V to the Constitution of the United States:

"No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

United States of America
Department of Justice
Immigration and Naturalization Service
Honolulu, T. H.

In the Matter of Marie Germaine Rose Anna Bisaillon alias Helen Corinne Dupuis alias Germaine Bisaillon Respondent	File No. A-6877582

Hearing held before F. Arnold, Special Inquiry Officer, at Oahu Prison, Honolulu, T. H. on Monday, April 9, 1956.

Present:

Special Inquiry Officer:	F. Arnold
Examining Officer:	George L. Elms
Stenographer:	Betsy J. Ho
Respondent's Representative:	No one
Interpreter:	None

TRANSCRIPT OF TESTIMONY

EXHIBITS

Number	Description	Page Identified
1	Form I-226, Notice of Hearing, addressed to the respondent dated March 20, 1956	7
2	Warrant of arrest issued by the Officer in Charge, Honolulu, T. H. on January 4, 1956 to respondent	8
3	Immigration Visa No. 1836 issued by the American Foreign Service at Montreal, Canada on October 21, 1947 in the name of Germaine Bisaillon	10
4	Reentry permit No. 1619584 issued in the name of Germaine Bisaillon at Honolulu, T. H., on June 23, 1950	11
5	Waiver of Indictment, Information, Judgment and Commitment identified as Criminal No. 10982 in the matter of United States of America versus Marie Germaine Rose Anna Bisaillon	12
6	Indictment, Judgment identified as criminal No. 10993 in the matter of United States of America versus Marie Germaine Rose Anna Bisaillon aka Helen Corinne Dupres, et al.	13

PROCEEDINGS

By special inquiry officer: This is a hearing in exclusion proceedings in the case of Marie Germaine Rose Anna Bisaillon, alias Helen Corinne Dupuis, alias Germaine Bisaillon, on charges set forth in the executed warrant of arrest and pursuant to notice of hearing dated March 20, 1956.

Special inquiry officer to respondent in English:

Q. Are you the person just named?

A. I am, yes. I have a statement here, Mr. Arnold. I'm sorry to interrupt you. Would you care to——

By special inquiry officer: I'm afraid it is a little premature. You will be given an opportunity as soon as we get through with the preliminaries.

By respondent: Yes. I'm sorry.

Special inquiry officer to respondent in English:

Q. Will you please stand and raise your right hand? (Complies.) Do you solemnly swear the testimony you give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. What is your true and correct name?

A. Marie Germaine Rose Anna Bisaillon.

Q. Have you ever used or been known by any other name?

A. Well, that's my name.

Q. But have you ever been known by any other name?

A. Helen Dupres when I went to Guam.

Q. Have you used the name Helen Corinne Dupres?

A. Yes.

Q. And also the name Germaine Bisaillon?

A. Yes.

Q. At this hearing you have the right to representation by counsel of your own choice at no expense to the Government, which counsel may be an attorney at law or any other person authorized (3) to practice in Immigration and Naturalization proceedings. Do you desire to be so represented?

A. Yes, I do.

Q. Are you represented by counsel?

A. Yes, by Mr. Poston.

Q. You are informed letter addressed to you on March 20, 1956 that Mr. Elmer E. Poston could not represent you in these proceedings. Do you understand that?

A. Mr. Poston told me that he was asking for a new consideration of representing of myself and that he told me also he hasn't received his reply from Washington.

Q. But you understand that the letter told you that Mr. Poston could not represent you in these proceedings?

A. He did not tell me so himself.

Q. But the letter told you. Did you understand the letter?

A. The letter was from the immigration. The letter was not from Mr. Poston. I have received a letter here from Mr. Poston and——

Q. But the letter told you that Mr. Poston could not represent you. Did you understand the letter?

A. That is from the immigration, but from Mr. Poston he still thinks that he will represent me.

Q. You stated that you had something you wish to say. Will you please go ahead.

A. Would you care to read this, Mr. Arnold, or——

Q. If you do not wish to read it you may——

A. Am I allowed to read it?

Q. Yes.

A. I can give you just a copy.

Examining officer to respondent in English: Q. The statement which you endeavored—desired to read or present, is that a statement prepared for you by Elmer E. Poston?

A. Well, I would say that these are the facts that, something that you probably wanted to know.

Q. But is it a statement or document prepared for you by Mr. Poston?

A. Well, I mean this is the conversation that—I wouldn't say the conversation, but these are the—well, I read it to you. (4)

By Special Inquiry Officer: But first will you please answer the question. Is that statement composed by you or was it composed by Mr. Poston?

By Respondent: Well, this is exactly what I would say myself.

By Special Inquiry Officer: Well, who composed it? You or Mr. Poston?

By Respondent: Well, I didn't write this, but this is my idea as well as his idea.

Examining Officer to Respondent in English: Q Was it prepared by Mr. Poston in the final form?

A. Yes.

By Examining Officer: I object to the acceptance of any documents or statements prepared by Mr. Poston in behalf of respondent in view of the ruling of the Board of Immigration Appeals that he may not represent respondent in these—in this deportation proceeding.

By Special Inquiry Officer: Objection sustained.

Special Inquiry Officer to Respondent in English: Q. Miss Bisaillon, if you wish to make any statement without the use of the prepared statement—

A. Yes.

Q. ——composed by Mr. Poston, you may go ahead.

A. If I were to make any statement, you mean to say that if I were to say this is where I was born and this is where my reentry permit and that I was—this is really, I mean, it is not something prepared. These are the facts that I have been convicted, not——

Q. Miss Bisaillon, you are reading apparently from the prepared statement. (5)

A. Well, I cannot give you the numbers of my criminal code or something like that.

Q. The examining officer will bring out whatever facts are necessary to determine whether or not you are deportable.

A. Yes, but I have to have some papers to enable me to help myself also. My [illegible] papers, I mean. I cannot go to Court and get the numbers from my files and my charges because I am confined over here.

Q. If——

A. I have no way of communicating at all with anybody.

Q. If it becomes necessary for you to do so, I'm sure the examining officer will secure whatever information may be necessary. Do you understand?

A. Yes.

(Discussion off the record)

Q. Miss Bisaillon, ——

A. Yes.

Q. ——do you wish to have an opportunity to get an attorney other than Mr. Poston?

A. Well, not until I hear from Mr. Poston that he cannot represent me..

Q. We are going to proceed with this hearing whether or not Mr. Poston is your attorney, ——

A. Well, I mean to say——

Q. ——do you understand that?

A. Yes. I understand that if I would have a final action from Mr. Poston, well, then the case would be different. My position would be different.

By Examining Officer: I would like at this time to present and offer into evidence a copy of Form I—226 dated March 20, 1956, addressed to the respondent which was delivered by me to the respondent by hand on March 20, 1956, which notice of hearing includes notice to the respondent on that date of the fact the Board of Immigration Appeals had concluded Mr. Poston could not represent her in these proceedings. I would further like to state for the record that—and in the presence of the respondent, that I further advised her that the hearing would be held

on April 9 and that she should be prepared to proceed at that time by securing any other attorney if she so desired. (6)

By Respondent: May I say something? May I say something?

By Special Inquiry Officer: Just a minute (showing alien letter). You are informed that that letter is marked Exhibit 1 and made a part of the record. Do you understand?

By Respondent: Yes.

(Discussion off the record)

Special Inquiry Officer to Respondent in English:

Q. How long will it take you to secure an attorney other than Mr. Poston?

A. Well, I might—I'd like to consult some friends of mine who would try and contact somebody outside, see, because over here I don't hear of anything that is going on the outside of the world.

Q. I'm speaking of securing an attorney.

A. Well, ——

Q. Will 1 o'clock tomorrow be satisfactory to continue your case?

A. I'm ready to go ahead with the hearing if you want to.

Q. You mean you are now ready to proceed with your hearing without counsel or anybody representing you?

A. I will do my best to answer the question as far as—to the best of my knowledge.

Q. I wish you would state definitely that you are willing to proceed without counsel or other person

representing you. Are you willing to proceed without counsel or other person?

A. I will try and do my best to answer the questions to the best of my knowledge. I mean, if I feel it will not tend to incriminate myself.

Q. But will you please say yes or no? Are you willing to proceed with your hearing without representation by counsel or other person authorized to practice in immigration and naturalization proceedings?

A. Well, this question. I mean, yes or no. That is not enough. (7)

Q. I beg your pardon.

A. I cannot answer yes or no because the question is complicated. I would say I will answer the questions that will not tend to incriminate myself any further.

Q. You will be given to 1 PM tomorrow to secure counsel. In the event you do not have counsel, the hearing will proceed. Do you understand?

A. If you want we can proceed—you can proceed with the hearing, right now.

Q. You have to say yes or no about counsel. I can't take a half answer. You do not say yes. You do not say no.

A. Okay, I'll say yes.

Q. I now show you warrant for your arrest issued by the Officer in Charge, Honolulu, T. H., on January 4, 1956 and you are informed that a copy thereof is marked Exhibit 2 and made a part of the record. Do you understand?

A. I do.

Q. The warrant charges that you are in the United States in violation of the immigration laws thereof and are subject to be taken into custody and deported pursuant to the following provisions of law and for the following reasons, to wit: Section 241(a)(4) of the Immigration and Nationality Act, in that you have been convicted of a crime involving moral turpitude committed within 5 years after entry and sentenced to confinement therefor in a prison or corrective institution for a year or more, ——

(Discussion off the record)

——to wit: Violation of Title 18, U.S. Code, Section 1542, in wilfully, knowingly making a false statement in an application for a passport for the use of another in violation of Title 18, United States Code, Section 911, Section 241(a)(4) of the Immigration and Nationality Act in that you have at any time after entry been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit: Violation of Title 18, United States Code, Section 1542, in wilfully and knowingly making a false statement in an application for a passport for your own use in violation of Section—Title 18, United States Code, Section 911. Do you clearly understand the nature of the warrant charges?

A. I understand the nature of the warrant charges, but I deny that I have committed crimes involving moral turpitude. I deny that these crimes involve moral turpitude.

Q. You are advised that you will have a reasonable opportunity to examine the evidence against you, to present evidence in your own behalf, to cross-examine witnesses presented by the (8) Government, and to make objections for the record. Do you understand?

A. Yes. To present witnesses for cross-examination.

(Discussion off the record)

By Special Inquiry Officer: The examining officer may proceed?

Examining Officer to Respondent in English: Q. Would you please state your full, true and correct name?

A. Marie-Germaine Rose Anna Bisaillon.

Q. Have you ever been known by or used any other name or names?

A. Helen Dupres.

Q. Have you ever used the name of Helen Corinne Dupres?

A. Yes.

Q. When and for what purpose did you use the name of Helen Corinne Dupres?

A. To go to Guam.

Q. What is your present place of abode?

A. Oahu Prison.

Q. Honolulu, T. H.?

A. Honolulu.

Q. Do you have any other residence in Honolulu?

A. Well, I live at 2412 Kuhio. I have recently moved to 2412. Prior to coming to here, I used to live

at 2410. Florence just moved to the apartment next door very recently in the last two weeks, but same building, same street.

Q. What is your normal occupation?

A. I am the manager of a four-unit apartment house.

Q. When and where were you born?

A. Montreal, Canada, October 10, 1919.

Q. Of what country are you a citizen or subject?

A. I am a citizen of Canada.

Q. Do you at this time make any claim to United States citizenship?

A. I beg your pardon. (9)

Q. Do you at this time make any claim to United States citizenship?

A. Yes. I would like very much. I would like to become a citizen. I haven't got my papers yet.

Q. Then you have no claim to United States citizenship now?

A. I am an alien right now.

Q. Have you ever been admitted to the United States for permanent residence?

A. Yes, in 1947, December 8. December, I think it was December 8, 1947 for permanent residence.

Q. Do you recall at which port you were admitted to the United States for permanent residence in 1947?

A. Yes. At St. Albans, Vermont.

Q. I now present to you for your inspection immigration visa No. 1836 issued by the American Foreign Service, at Montreal, Canada on October 21, 1947 under nonquota subdivision c of section 4 in the

name of Germaine Maria Marie, rather, Rose Anna Bisa[illegible], which is endorsed to show the holder thereof was admitted to the United States at the port of St. Albans, Vermont on December 8, 1947 under section 4c of the immigration act of 1924.' I ask you if that immigration visa relates to you and your admission to the United States as inscribed thereon?

A. Yes.

By Examining Officer: I now present immigration visa 8136 issued in the name of the respondent and request that it be marked as an exhibit and made a part of the present proceeding.

By Special Inquiry Officer: Visa is marked Exhibit 3 and made a part of the record.

Examining Officer to Respondent in English: Q. Following your admission to the United States for permanent residence on December 8, 1947, have you ever made any trips to a foreign country?

A. Yes. To South America.

Q. Do you recall the date or approximate date that you returned to the United States from South America?

A. I believe it was in 1950. (10)

Q. Do you recall the first United States port of entry you reentered to the United States in 1950?

A. In Puerto Rico.

Q. From what country were you coming when you arrived at Puerto Rico in 1950?

A. From Brazil.

Q. I now present to you for your inspection permit to reenter United States No. 1619584 issued in

the name of Germaine Bisaillon at Honolulu, T. H. on June the 23rd, 1950 and endorsed thereon to show that the alien named in that permit, Germaine Bisaillon, arrived in the United States on August 30, 1950 via Pan American Airways Flight 206 at San Juan, Puerto Rico and ask you if that reentry permit relates to you?

A. Yes.

By Examining Officer: I now present permit to reenter the United States No. 1619584 and request that it be marked as an exhibit and made a part of these proceedings.

By Special Inquiry Officer: Permit is marked Exhibit 4 and made a part of the hearing.

Examining officer to respondent in English: Q. Miss Bisaillon, were you on or about August the 30th, 1955 indicted in the form of a bill of information and charged with violation of United States laws and particular—and particularly 18 United States Code, Section 1542 and 911?

A. Yes.

Q. As a result of that indictment by information were you convicted and sentenced to a prison sentence?

A. Yes.

Q. What period of time were you sentenced to serve in prison?

A. 18 months.

Q. I now present to you for your examination a waiver of indictment made of United States of America versus Marie Germaine Rose Anna Bisaillon also known as Helen Dupres d-u-p-r-e-s, Criminal N-

10982, also bill of information Criminal No. 10982 in the matter of United States of America versus Marie Germaine Rose Anna Bisaillon also known as Helen Dupres d-u-p-r-e-s, the same name, and judgment and commitment under Criminal No. 10982 relating to the matter of United States of America versus Marie Germaine Rose Anna Bisaillon also known as Helen Dupres and ask you if all those (11) documents relate to your indictment, conviction and sentence?

A. Yes.

By Examining Officer: I now present the waiver of indictment, information, judgment and commitment identified as Criminal No. 10982 in the matter of United States of America versus Marie Germaine Rose Anna Bisaillon also known as Helen Dupres and request that it be marked as an exhibit and made a part of the present proceedings.

By Special Inquiry Officer: Documents are collectively marked Exhibit 5 and made a part of the record.

Examining Officer to Respondent in English: Q. Miss Bisaillon, subsequent to your conviction which is certified to under Exhibit No. 5, were you again indicted, tried and convicted of any offense by the United States Government?

A. Yes.

Q. I now present to you for your inspection indictment identified as Criminal No. 10993 for violation of 18 United States Code, Sections 1542—1542, 911 and 371 in the matter of Marie Germaine Rose Anna Bisaillon also known as Helen Corinne Dupres——

A. The number is 10933, isn't it?

Q. 10993.

A. It is 993.

Q. Did I say it wrong?

A. Didn't you say 971?

(Discussion off the record)

Q. ——relating to the matter of United States of America versus Marie Germaine Rôse Anna Bisaillon also known as Helen Corinne Dupres, et al. and the judgment of the court under the same Criminal No. 10993 in the matter of United States of America versus Marie Germaine Rose Anna Bisaillon aka Helen Corinne Dupres, et al., and ask you if that indictment, conviction and judgment relate to you?

A. Yes.

By Examining Officer: I now present the indictment, judgment identified as criminal No. 10993 and identified by the respondent as relating to her (12) and request that it be marked as exhibit and made a part of the present proceedings.

By special inquiry officer: Documents are collectively marked Exhibit 6 and made a part of the record.

(Discussion off the record)

Examining officer to respondent in English: Q. Your attention is invited to the indictment in Exhibit 6 wherein it sets forth certain acts committed by you and that said acts were committed on or about January the 16th, 1953. Do you understand?

A. Yes.

Q. Were those acts in connection with your securing a United States passport?

A. Yes.

Q. Did you, in fact—were you, in fact, issued a United States passport?

A. Yes. I pleaded guilty to that on this.

Q. And that was on or about January, 1953?

A. Yes. It was in 1953.

Q. Attention is invited to the bill of information in Criminal No. 10982 which is identified as Exhibit 5 in these proceedings wherein it sets forth that on or about August 16, 1954 you did take certain actions in securing a United States passport for a—one, Florence Paquet. Is that corerct?

A. I signed for her.

Q. Then these two acts were approximately one year and 7 months apart, is that right?

A. Approximately, yes.

Q. Do you know of your own knowledge and information if Florence Paquet did receive a United States passport?

A. If I know now?

Q. Yes.

A. I do know. Yes.

(Discussion off the record) (13)

By Examining Officer: At this time I would like to lodge an additional charge to those shown in the warrant of arrest.

By Special Inquiry Officer: You may proceed.

I charge that the respondent, Marie Germaine Rose Anna Bisaillon, also known as Helen Corinne Dupres, also known as Germain Bisaillon, is subject to deportation for the following reasons, to wit: Section 241(a)(4) of the Immigration and Nationality Act

in that she had been convicted of a crime involving moral turpitude committed within 5 years after entry and sentenced to confinement therefor in a prison or corrective institution for a year or more to wit: Violation of Title 18, United States Code, Section 1542, in wilfully and knowingly making a false statement in an application for a passport for the use of another and Section 241(a)(4) of the Immigration and Nationality Act, in that, she at any time after entry, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct; to wit: Violation of Title 18, United States Code, 1542, in wilfully and knowingly making a false statement in an application for a passport for the use of another and violation of Title 18, United States Code, Section 1542, in wilfully and knowingly making a false statement in an application for a passport for her own use.

Special Inquiry Officer to Respondent in English:

Q. Do you clearly understand the nature of the charges which have just been lodged against you?

A. Yes.

Q. You are informed that inasmuch as charges have been lodged against you, you have the right to secure an attorney to represent you because the charges have been lodged and a continuance in order to meet the charges. Do you wish to secure an attorney or have a continuance in order to enable you to meet the lodged charges?

(Discussion off the record)

A. Yes. Well, if I could have an additional time for a continuance of the hearing.

(Discussion off the record)

I want to get an attorney and time to meet the charges. (14)

Q. Then your hearing will be deferred until next Friday at 1 PM. Is that satisfactory?

A. Could I have more time than that because during the week I'm not allowed any visitors and I would like to talk about it.

(Discussion off the record)

I would like to maybe ask about it. I have visitors only on Sundays except special visitors like when Mr. Elms comes around.

Q. The lodged charges are essentially those in the warrant of arrest with the exception that the conviction under Section 911, Title 18 is omitted. In view of that it would seem that you should be able to proceed with your hearing next Friday at 1 PM and the hearing will be deferred until Friday, 1 PM.

(Hearing deferred)

* * * * *

I hereby certify that to the best of my knowledge and belief, the foregoing is a true report of everything that was stated during the course of the hearing, including oaths administered and rulings on objections, except statements made off the record.

F. Arnold,
Special Inquiry Officer.

I hereby certify that the foregoing is a true and correct transcript of hearing, as taken by me in short hand.

Betsy J. Ho,
Stenographer. (15)

Hearing resumed April 13, 1956.

Special inquiry officer to respondent in English:

Q. Will you please stand and raise your right hand? (Complies) Do you solemnly swear the testimony given in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. What is your name?

A. I beg your pardon.

Q. Your name?

A. My name?

Q. Yes.

A. Marie Rose Anna, no. It isn't my name. Marie Germaine Rose Anna Bisaillon.

Q. Hearing was deferred in your case last Monday because two additional charges were lodged against you and in order that you might secure attorney if you wish to and have an opportunity to prepare to meet the charges. Do you desire be now represented by an attorney?

A. Yes.

Q. Have you your attorney?

A. Yes.

Q. What about him? Where is he in other words?

A. Well, so far I do not have any.

Q. Have you made any effort to secure an attorney since last Monday?

A. Well, I have been but—I will probably do—I will ask Mr. Poston if he will find me an attorney when I hear from because I don't know anybody.

Q. Have you made any effort since last Monday to secure an attorney?

A. Well, I was waiting for some—for a phone call or some letters from Mr. Poston and I haven't received any word from him.

Q. Then you have not made any active effort to secure an attorney since last Monday, is that so?

A. Well, what could I make? What could I do?

Q. Couldn't you telephone or write?

A. I don't know who to write to. I have—I mean, I have Mr. Soares for my case, but he is a very good attorney, but he doesn't do me any good so why should I hire him?

(Discussion off the record) (16)

Q. When will you have an attorney and be prepared to proceed with this case?

A. For this hearing?

Q. Yes.

A. (Discussion off the record) Well, maybe not for this hearing then.

Q. Not for this hearing?

A. I don't want you to have you come over here just to ask me whether I have an attorney or not because that doesn't make sense. Maybe after——

Q. Miss Bisaillon, will you please state yes or no to the question whether or not you desire to be represented by an attorney because two additional charges were lodged against you? Now let's get a yes or no. Now do you want to have an attorney or not?

(Discussion off the record)

A. I would like to talk to Mr. Poston on the telephone.

By Examining Officer: May I ask a few questions of the respondent at this time?

By Special Inquiry Officer: Yes, provided it pertains to whether or not she wishes an attorney.

By Examining Officer: I believe it does.

By Special Inquiry Officer: Okay.

Examining Officer to Respondent in English: Q. Miss Bisaillon, did you telephonically contact Mr. Poston last Monday at the time this hearing was continued and advise him that your hearing had been continued until today, Friday the 13th at 1 PM, at which time it would be reconvened for conclusion?

A. Yes.

Q. Mr. Poston was then aware that the hearing was set—scheduled for 1 PM today, is that correct?

A. Yes. (17)

Q. Since informing Mr. Poston of—strike that. Did Mr. Poston make any statement to you at that time as to any action he mighth take?

A. He told me that he would contact me. He would either phone me or send me a letter.

Q. Has Mr. Poston contacted you in any way telephonically or by mail——

A. No.

Q. ——or by any representative since you—he told you he would do so?

A. No. I have been waiting ever since. Up to this morning I thought maybe at the last minute he will come.

By Examining Officer: I have no further questions on this matter.

By Special Inquiry Officer: Recess in order that respondent may telephone Elmer E. Poston.

(Recess—Hearing resumed)

Special Inquiry Officer to Respondent in English:
Q. Miss Bisaillon, you have been given an opportunity to telephone Mr. Poston. What results have you had?

A. Well, he wasn't in his office.

Q. Then as I understand it you were willing to be without counsel until charges were lodged against you last Monday and you were given a further opportunity to secure counsel. Now are you willing to proceed without counsel at this time?

A. Yes.

By Special Inquiry Officer: You may proceed.

By Examining Officer: I have no questions to place to the respondent at this time.

Special Inquiry Officer to Respondent in English:
Q. Is there any evidence of any kind you wish to present before your case is closed?

A. No. (18)

Q. You are informed that you are not eligible for discretionary relief of any kind. Do you understand?

A. I beg your pardon. I am no——

Q. You are not eligible——

A. Yes.

Q. ——to be granted suspension of deportation, permission to leave the United States voluntarily or to apply for pre-examination. Do you understand?

A. Yes.

Q. In the event you are found to be deportable and ordered deported, you have the right to specify the country to which you shall be deported. What country do you wish to specify?

A. Canada.

Q. Have you a social security card?

A. Yes.

Q. Do you know the number?

A. I do not recall the number. I don't know if I have it with me, with my papers here.

Q. In what name is your card?

A. Under Germaine Bisaillon.

(Discussion off the record)

Q. A copy of my decision in your case will be served upon you and you will be fully informed concerning your right to appeal your case in the event the decision is adverse to you to the Board of Immigration Appeals, Washington, D. C., and whatever procedure you may follow. Do you understand?

A. Yes.

By Special Inquiry Officer: Then, your case is now closed.

(Hearing closed)

* * * * * (19)

I hereby certify that to the best of my knowledge and belief, the foregoing is a true report of everything that was stated during the course of the hearing, including oaths administered and rulings on objections, except statements made off the record.

F. Arnold,
Special Inquiry Officer.

I hereby certify that the foregoing is a true and correct transcript of hearing, as taken by me in shorthand.

Betsy J. Ho.
Stenographer.

LE COPY

FILED
OCT 15 1958
JAMES R. BROWNING,

No. 338

In the Supreme Court of the United States

OCTOBER TERM, 1958

MARIE GERMAINE ROSE ANNA BISAILLON, PETITIONER

v.

JOSEPH SURECK, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, HONOLULU

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
WILLIAM J. SCHAFER III,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	1
Statutes and regulation involved	2
Statement	3
Argument	6
Conclusion	8

CITATIONS

Cases:	
Bridges v. *United States*, 346 U. S. 209	6
Jordan v. *De George*, 341 U. S. 223	6
Kaneda v. *United States*, 278 Fed. 694	6
Masaichi Ono v. *Carr*, 56 F. 2d 772	6
United States v. *Schlotfeldt*, 109 F. 2d 106	6
United States v. *Uhl*, 70 F. 2d 792, certiorari denied, 293 U. S. 573	6
Statutes and regulations:	
Immigration and Nationality Act of 1952, § 241 (a) (4) (66 Stat. 204, 8 U. S. C. 1251 (a) (4))	2, 4, 7
40 Stat. 227	6
18 U. S. C. 1542	2, 4, 5, 6, 7
22 U. S. C. 213	6
8 C. F. R. 242.15	3, 7

483497—58

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 338

MARIE GERMAINE ROSE ANNA BISAILLON, PETITIONER

v.

JOSEPH SURECK, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, HONOLULU

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and conclusions of law of the district court (R. 12–16) are unreported. The opinion of the court of appeals (R. 129–133; Pet. App. 1–7) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 1958. The petition for a writ of certiorari was filed on September 5, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the crime of willfully making a false statement in an application for a passport involves moral turpitude.

2. Whether petitioner was denied the right to counsel in the deportation hearing.

3. Whether petitioner was denied full judicial review in that certain discussions in the deportation hearing were made off the record, where the substance of such discussions was testified to by the examiner in the district court.

STATUTES AND REGULATION INVOLVED

Immigration and Nationality Act of 1952, § 241 (a) (4), 66 Stat. 204:

8 U. S. C. 1251 (a) (4):

> (a) Any alien in the United States * * * shall, upon the order of the Attorney General, be deported who
>
> * * * * * *
>
> (4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial.

18 U. S. C. 1542:

> Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the

issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

8 C. F. R. 242.15:

The hearing before the special inquiry officer, including the respondent's pleading, the testimony, the exhibits, the special inquiry officer's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the special inquiry officer.

STATEMENT

Petitioner, a native and citizen of Canada, was admitted to the United States for permanent residence at St. Albans, Vermont, on December 8, 1947 (Pet. App. 24). Sometime after June 23, 1950, she departed from the United States and re-entered on August 30, 1950, at San Juan, Puerto Rico (Pet. App. 25).

In October of 1955, in the United States District Court for the District of Hawaii, petitioner was convicted and sentenced to serve 18 months imprisonment for a violation of 18 U. S. C. 1542 in that she falsely stated in the application of Florence Paquet for a United States passport that she was not related to Florence Paquet and that she knew her to be a citizen

of the United States (R. 4; Pet. App. 26, 29). In December of 1955, petitioner again was convicted of a violation of 18 U. S. C. 1542 in that she made a false statement in an application for a passport that she was born in Laurin, Montana (R. 4; Pet. App. 27). Petitioner was sentenced to pay a fine of $1,000.00.

Deportation proceedings were commenced against petitioner and on January 4, 1956, a warrant was issued for petitioner's arrest (Pet. App. 21). Petitioner was charged with being deportable under 8 U. S. C. 1251 (a) (4) as an alien who had been convicted of a crime involving moral turpitude within five years after entry and sentenced to confinement for a year or more, and also as one who after entry had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct (Pet. App. 22, 29, 30). Petitioner promptly retained the services of Elmer E. Poston, lawyer and retired District Director of the Immigration and Naturalization Service for the District of Hawaii, but because of his previous employment the Service questioned Mr. Poston's right to represent petitioner in the deportation proceeding (Pet. App. 16). This question was taken to the Board of Immigration Appeals which decided that Mr. Poston was disqualified from representing petitioner (Pet. App. 19). This ruling was communicated to Mr. Poston on March 17, 1956. On March 19, 1956, Mr. Poston informed the District Director that he had applied to the Board for reconsideration of the ruling (R. 77). On March 20, 1956, the petitioner was informed by the Service that there would be a hearing of her case be-

fore a special inquiry officer on April 9, 1956 (Pet. App. 3, 16, 19, 20). She was told that Mr. Poston was disqualified to represent her but that she might obtain another attorney (Pet. App. 19–20).

At the hearing petitioner was not represented by counsel. When asked whether she desired a continuance to the following day to obtain counsel or whether she would proceed without counsel, petitioner replied that she would proceed (Pet. App. 21). During the hearing, the government entered new charges, actually rewordings of the originals, and petitioner was given a continuance until April 13th to obtain counsel (Pet. App. 29, 30, 31). Petitioner did not obtain counsel and on April 13th she consented to proceed with the hearing (Pet. App. 32, 33, 35). On the basis of petitioner's two admitted convictions under 18 U. S. C. 1542, the special inquiry officer ruled that petitioner was deportable under 8 U. S. C. 1251 (a) (4) (R. 4, 13, 14). On appeal to the Board of Immigration Appeals, where petitioner was fully represented by her present counsel, that decision was upheld (R. 14).

Petitioner then filed in the United States District Court for the District of Hawaii an action for declaratory judgment seeking review of the agency order (R. 3–6). The court found that the determination of the Service was not erroneous and that petitioner had not been denied a fair hearing. It accordingly refused to grant the declaratory relief (R. 17, 120). The court of appeals unanimously affirmed (R. 129–133; Pet. App. 1–7).

1. Petitioner contends that the crime of making a false statement in a passport application does not involve moral turpitude. Under 18 U. S. C. 1542 such a statement is a crime only if made "willfully and knowingly * * * with intent to induce or secure the issuance of a passport * * * contrary to the laws regulating the issuance of passports * * * ." The crime thereby defined would seem no different in its moral aspects from that of perjury, for it is the willful and knowing falsification that is the essential element of both.[1] Perjury, in turn, has uniformly been held to involve moral turpitude. *Kaneda* v. *United States*, 278 Fed. 694 (C. A. 9); *Masaichi Ono* v. *Carr*, 56 F. 2d 772 (C. A. 9); *United States* v. *Schlotfeldt*, 109 F. 2d 106 (C. A. 7); *United States* v. *Uhl*, 70 F. 2d 792 (C. A. 2), certiorari denied, 293 U. S. 573. In addition, the crime defined by 18 U. S. C. 1542 also incorporates all of the elements of fraud, which likewise has been held to involve moral turpitude. *Jordan* v. *De George*, 341 U. S. 223. A knowingly false statement is a crime under 18 U. S. C. 1542 only if made with the specific intent to induce the issuance of a passport in violation of the law—in effect, with an intent to defraud the United States.[2]

[1] Indeed, since passport applications are elsewhere required to be made under oath (40 Stat. 227, 22 U. S. C. 213), a violation of 18 U. S. C. 1542 would normally also constitute perjury.

[2] *Bridges* v. *United States*, 346 U. S. 209, upon which petitioner primarily relies, is irrelevant. The Court held that the gravamen of the offenses there charged, under very different statutory provisions, was mere perjury and an intent to defraud was not an essential element of the crimes, and hence that

Since the crime defined by 18 U. S. C. 1542 necessarily involves moral turpitude, the fact of conviction is all that is required for deportation under 8 U. S. C. 1251 (a) (4). Thus petitioner's contention (Pet. 18) that the particular facts on which she was convicted may not be used to show moral turpitude is immaterial.

2. Petitioner's contention that she was denied the right to be represented by counsel at the deportation hearing (R. 14) is refuted by the record. The counsel originally employed to represent petitioner was disqualified from doing so and the petitioner made no further effort to retain counsel for the hearing. The record shows very clearly that on two occasions the special inquiry officer offered to grant petitioner a continuance so that she could retain counsel but on each occasion she stated that she was willing to proceed without counsel (Pet. App. 21, 35).

3. During the hearing, thirteen discussions were, with the permission or at the suggestion of the special inquiry officer, made off the record (Pet. App. 19, 20, 22, 23, 28, 29, 30, 31, 33, 36). That procedure, commonly employed even in judicial trials, was expressly authorized by 8 C. F. R. 242.15. The examining officer at the hearing testified in the district court that all but a few of these discussions concerned petitioner's efforts to secure counsel (R. 8[illegible]).[3] The dis-

a wartime suspension of the statute of limitations on crimes involving "fraud" did not apply. The Court held neither that 18 U. S. C. 1542 did not require an intent to defraud, nor that "fraud" was essential for moral turpitude.

[3] The others concerned the procedure by which petitioner could obtain copies of the indictments (R. 88, 89) and a request for clarification of an answer (R. 91).

cussions were, as the court of appeals held, "innocuous" (Pet. App. 4), and petitioner has shown no prejudice to her from their omission from the transcript.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
MALCOLM ANDERSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
WILLIAM J. SCHAFER III,
Attorneys.

OCTOBER 1958.

U. S. GOVERNMENT PRINTING OFFICE 1958